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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2014-0052, Sequence No. 2]

**Federal Acquisition Regulation; Federal Acquisition
Circular**

2005-74; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005-74, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005-74, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-74 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

Rules Listed in FAC 2005-74

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>	<u>Analyst</u>
*I	Commercial and Government Entity Code	2012-024	Loeb
*II	Repeal of the Recovery Act Reporting Requirements	2014-016	Glover
*III	Expansion of Applicability of the Senior Executive Compensation Benchmark	2012-017	Chambers
*IV	Contractor Comment Period, Past Performance Evaluations	2012-028	Glover
*V	Defense Base Act	2012-016	Chambers

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005-74 amends the FAR as specified below:

Item I—Commercial and Government Entity Code (FAR Case 2012-024)

This final rule adds subpart 4.18, "Commercial and Government Entity Code," and related provisions and clauses, to the FAR. The new subpart requires the use of Commercial and Government Entity (CAGE) codes, including North Atlantic Treaty Organization (NATO) Cage (NCAGE) codes for foreign entities, for awards valued above the micro-purchase threshold. The final rule also requires offerors, if owned by another entity, to identify that entity during System for Award Management (SAM) registration. The rule effective date is November 1, 2014.

**Item II—Repeal of the Recovery Act Reporting Requirements
(FAR Case 2014-016)**

This final rule adopts as final, with changes, two interim rules published on March 31, 2009, and July 2, 2010, under FAR case numbers 2009-009 and 2010-008. The interim rules amended the FAR to implement reporting requirements of the American Recovery and Reinvestment Act in subpart 4.15, 42.15, and clause 52.204-11, American Recovery and Reinvestment Act-Reporting Requirements. Future reporting requirements after January 31, 2014, were repealed by section 627 of Division E of the Consolidated Appropriations Act, FY 2014 (Pub. L. 113-76). The reporting website has closed for future reporting. This rule does not change the reporting required by the Federal

Funding Accountability and Transparency Act of 2006 (FFATA) on existing contracts, as implemented in FAR subpart 4.14 and clause 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards. Therefore, contractors and agencies are still required to continue their FFATA reporting on existing contracts, as implemented in FAR subpart 4.14 and clause 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards.

Item III—Expansion of Applicability of the Senior Executive Compensation Benchmark (FAR Case 2012-017)

This final rule adopts, without change, the interim rule published on June 26, 2013, at 78 FR 38535. The interim final rule amended the FAR by expanding the reach of the limitation on allowability of compensation for certain contractor personnel from a contractor's five most highly paid executives to all employees, but only for contracts with the Department of Defense (DoD), the National Aeronautical and Space Administration (NASA), and Coast Guard. The interim rule implemented section 803 of the National Defense Authorization Act for Fiscal Year 2012 (Pub L 112-81). Prior to the interim rule, this limitation on the allowability of compensation, which is an amount set annually by the Office of Federal Procurement Policy, applied only to a contractor's five most highly paid

executives at each of their home office(s) and any segments that report directly to the contractors headquarters, and covered all Federal agencies. Under the interim and this final rule, the application of this limitation to a contractor's five most highly paid executives continues for agencies other than DoD, NASA, and the Coast Guard. Because most contracts awarded to small businesses are awarded on a competitive, fixed-price basis, the impact of this compensation limitation on small businesses will be minimal.

Item IV—Contractor Comment Period, Past Performance Evaluations (FAR Case 2012-028)

This final rule implements sections 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013) and 806 of the NDAA for FY 2012 (Pub. L. 112-81, enacted December 31, 2011; 10 U.S.C. 2302 Note). These statutes require the Government to provide past performance information to source selection officials more quickly and to give contractors 14 calendar days from the date of delivery of past performance evaluations to submit comments, rebuttals, or additional information for inclusion in the past performance database. The evaluations will be posted to the database no later than 14

days after the evaluations are provided to the contractor. If a contractor has submitted comments to the Government and the Government has not closed the evaluation (i.e., reconciled the comments), the evaluation as well as any contractor comment will be posted to the database automatically 14 days after the evaluations are provided to the contractor. In this case, the database will apply a "Contractor Comment Pending Government Review" notification to the evaluation. Once the Government completes the evaluation, the database will be updated the following day and remove this notification. Contractors will also still be allowed to submit comments after the 14-day period.

Item V—Defense Base Act (FAR Case 2012-016)

This final rule amends the FAR to clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, et seq.) as extended by the Defense Base Act (42 U.S.C. 1651, et seq.). This Act provides disability compensation, medical benefits, and death benefits, for certain employment outside of the United States. The rule only clarifies the current responsibilities of contractors under the Defense Base Act and Department of Labor (DOL) regulations, and

does not initiate or impose any new administrative or performance requirements. This final rule has no impact on small business entities since it is merely clarifying already existing statutory and DOL regulatory requirements, and imposes no new requirements.

Dated: May 22, 2014.

William Clark,
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